

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Gabriel Jennings

Plaintiff,

v.

Ronnie R. Holt, et. al.

Defendants.

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CIVIL ACTION

No. 07-3852

MEMORANDUM OPINION

Fullam, Sr. J.

October 11, 2007

Petitioner, Gabriel Jennings, is a federal prisoner, confined at the United States Penitentiary - Canaan in Waymart, Pennsylvania. Mr. Jennings is serving a thirty-one year sentence. In 1992, Mr. Jennings filed a petition for a writ of *habeas corpus* in Civil Action No. 92-6093. That petition was considered on the merits and denied.

On September 17, 2007, petitioner filed a “Motion for *Habeas Corpus* Relief” Pursuant to 28 U.S.C. § 2241. In this document, petitioner argues that the Supreme Court’s holding in Jones v. United States 529 U.S. 848 (2000) voids his conviction. Mr. Jennings argues that under the holding in Jones, the acts for which he was convicted do not qualify as a federal crime.

Whether considered under § 2241 or § 2255, the petition must be dismissed. Because the petitioner seeks to have his sentence voided, and therefore to be released from custody, the petition cannot be brought under § 2241. 28 U.S.C. § 2241 applies solely to the execution of a sentence, and cannot be applied to the imposition of a sentence as the petitioner requests.

Petitioner's claim would be appropriate under U.S.C. 28 § 2255, had he not already filed such a claim in the past. Because the petitioner has already brought one petition under § 2255 which was considered and denied on the merits, he cannot bring this "second or successive" petition without first obtaining permission from the Court of Appeals.

An Order follows.

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|-------------------------|---|----------------|
| Gabriel Jennings | : | CIVIL ACTION |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | No. 07 - 03852 |
| Ronnie R. Holt, et. al. | : | |
| Defendants. | : | |

ORDER

AND NOW, this 11th day of October 2007, upon consideration of the petition of Gabriel Jennings for *habeas corpus* relief, IT IS ORDERED:

1. This petition, allegedly filed pursuant to 28 U.S.C. § 2241, is DISMISSED without prejudice to petitioner's right to seek relief under 28 U.S.C. § 2255.
2. If petitioner wishes to seek *habeas corpus* relief under 28 U.S.C. § 2255, he will be required (a) to pay the filing fee and, if he loses, court costs; and (b) first obtain permission from the United States Court of Appeals for the Third Circuit.
3. Unless, within 90 days, petitioner notifies this Court that he wishes his petition to be treated as having been filed pursuant to 28 U.S.C. § 2255, and seeks permission from the Third Circuit Court of Appeals to proceed with this case, the Clerk is directed to close the file administratively.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.